



March 30, 2000

Ms. Paula Jones
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR2000-1218

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133838.

The Employees Retirement System of Texas (the "ERS") received a request for the names and addresses of state employees owed death and insurance retirement benefits payments in inactive record files. You state that in making a good faith effort to respond to the request, you have submitted representative samples¹ of the names and addresses of state employee members identified in the ERS's survivor benefits unit's inactive files. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the responsive records are the members' retirement records which contain ERS members' names and addresses and, therefore, are made confidential pursuant to section 815.503(a) of the Government Code in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Section 815.503(a) of the Government Code states that:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records of members and annuitants under retirement plans administered by the retirement system that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this chapter.

See also id. § 811.001(15) (defining “retirement system” as the ERS). You also assert that these records have not been made public pursuant to section 815.503(c). Based on your assertions and our review of the submitted representative samples, we conclude that the documents are records of the ERS members for the purposes of section 815.503(a) and are confidential. Additionally, the requestor does not appear to be within the class of persons to whom the ERS may release this confidential information under section 815.503(b). Therefore, pursuant to section 552.101 of the Government Code, the ERS must not release the names and addresses of the ERS’s members with retirement benefits in the ERS’s survivor benefits unit’s inactive files.

Because section 815.503(a) of the Government Code in conjunction with section 552.101 of the Government Code is dispositive, we will not address your other arguments. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri", written in a cursive style.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 133838

Encl. Submitted documents

cc: Mr. Floyd Wherry
P.O. Box 11081
Jacksonville, Florida 32239
(w/o enclosures)